THE HON'BLE MR JUSTICE S.ANANDA REDDY

Writ Petition No.17272 of 2005

05-08-2005

Between:

Dr.V.Krishna Murthy W/o late Kotaiah Naidu, Hindu, aged about 57 years, R/o Plot No.2, D.no.40-27-4/A, Pennamaneni Poly Clinic Road, M.E.S.Colony, Vijayawada 10, Propreitor M/s.Sivani Blood Bank & Diagnostics, Vijayawada.

... PETITONER

AND

1.The Director, Drugs Control Administration, Hyderabad and another

.....RESPONDENTS

THE HON'BLE MR JUSTICE S.ANANDA REDDY

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Writ Petition No.17272 of 2005

ORDER:

This writ petition is filed by the petitioner aggrieved by the order passed by the first respondent dated 09.06.2005 cancelling the licence of the petitioner.

According to the petitioner, the first respondent has not complied with the directions of this Court issued in W.P.No.15666 of 2004, dated 27.10.2004, wherein the respondents were directed to issue a fresh show cause notice and conduct necessary enquiry as required. However, contrary to the same, the respondents issued the same show cause notice. Even though the petitioner submitted his explanation on 11.05.2005, the first respondent passed the order as if no explanation was received. Therefore, the impugned order is liable to be quashed on the ground of violation of directions of this Court as well as the principles of natural justice.

The learned counsel for the petitioner contended that though there is an effective alternative remedy of appeal under Section 122-O (2) of the Drugs and Cosmetics Rules, 1945 (for short 'the Rules') since the first respondent did not comply with the directions of this Court, the petitioner has come up with the present writ petition seeking quashing of the impugned order.

The learned Government Pleader for Medical, Health and Family Welfare, however, contended that as there is an effective alternative remedy of appeal before the State Government where the appellate authority can go into the allegations made by the petitioner, this Court may not entertain the writ petition.

Heard both sides and considered the material on record.

Admittedly, the first respondent issued a show cause notice dated 19.02.2005 calling upon the petitioner to submit his explanation with reference to the alleged irregularities on the part of the petitioner within a period of seven days from the date of receipt of a copy of the said notice. According to the petitioner, he submitted his explanation on 11.05.2005, which is stated to have been sent under the Certificate of Posting. However, the said explanation was not considered and orders were passed by the first respondent. In fact, according to the petitioner, the impugned order was passed in derogation to the directions issued by this Court in the above referred writ petition.

This Court while disposing of the above referred writ petition had referred to Rule 120-O of the Rules which contemplates for issuance of a notice, for conducting an enquiry and thereafter passing the final order; and having found that no such notice was issued and no such enquiry was conducted, the impugned order was set aside leaving it open to the respondents to pass orders on merits after giving sufficient opportunity to the petitioner and also after conducting enquiry as contemplated under the Rules. Thereafter, the respondents issued notice dated 19.02.2005 directing the petitioner to submit his explanation to the allegations made therein. As per the impugned order, no explanation was received from the petitioner. Though it is claimed that the petitioner submitted his explanation by sending the same under Certificate of Posting, as per the impugned order, the respondents did not receive any explanation. When once no explanation is received from the petitioner to the show cause notice, there is nothing to add further by the respondents before passing the final orders.

Under the above circumstances, the respondents cannot be found fault with for passing the impugned order. However, as the petitioner has got an effective alternative remedy of appeal under Rule 122-O (2) of the Rules, this Court declines to entertain the writ petition and

go into the merits of the matter.

The writ petition is accordingly disposed of directing the petitioner to approach the appellate authority. No costs.

05.08.2005

VGB